IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

OP.No. 968 of 2003(M)

PETITIONERS:
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1. **THE BOARD OF DIRECTORS OF THE NARATH SERVICE CO-OPERATIVE BANK LTD.NO.F.1436, NARATH P.O., KANNUR, REPRESENTED BY ITS PRESIDENT, M.P.JANARDHANAN**

2. **THE NARATH SERVICE CO-OPERATIVE BANK LTD NO.F.1436, NARATH P.O., KANNUR, REPRESENTED BY ITS SECRETARY.**

BY ADV. SRI.V.G.ARUN.

RESPONDENTS:
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1. **THE LABOUR COURT, KANNUR.**

2. **P.P.SOMAN, PUTHIYIDAYIL HOUSE, NARATH P.O., KANUR- 670 603.**

BY GOVERNMENT PLEADER SMT. SMITHA SUKUMAR FOR R1, ADV. SRI.K.R.B.KAIMAL (SR.) FOR R2.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 1688/2003 IN O.P. NO. 968/2003-M

DISMISSED

01/11/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE RESOLUTION NO.1. DTD. 25/11/1994 OF THE BANK.

EXT.P.2: COPY OF THE G.O.RT. NO. 135/99 CO-OP. DTD. 11/03/1999 OF THE GOVERNMENT.

EXT.P.3: COPY OF THE JUDGMENT IN O.P. 16293/1999 DTD. 09/07/2001 OF THE HIGH COURT OF KERALA.

EXT.P.4: COPY OF THE PROCEEDINGS DTD. 14/08/2001 OF THE COMMITTEE OF THE BANK.

EXT.P.5: COPY OF THE CLAIM PETITION NO. 40/2001 FILED BY THE R.2. BEFORE THE R.1. DTD. 19/11/2001.

EXT.P.6: COPY OF THE STATEMENT FILED BY THE BANK IN C .P. 40/2001 OF THE LABOUR COURT DTD. NIL.

EXT.P.7: COPY OF THE ARGUMENT NOTES SUBMITTED BEFORE THE LABOUR COURT IN C.P. 40/2001 DTD. NIL.

EXT.P.8: COPY OF THE ORDER IN C.P. 40/2001 OF THE LABOUR COURT DTD. 31/08/2001.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.968 OF 2003

Dated this the 1st day of November, 2007

JUDGMENT

The petitioner is a co-operative society. The second respondent was employed as a junior clerk in its service. Later, he was promoted as branch manager. He was thereafter reverted as junior clerk. After that, while working as junior clerk, he was placed under suspension in connection with a disciplinary proceedings, which culminated in an order of dismissal being issued on 23.12.1995. It is not in dispute that he was paid subsistence allowance till that date, as is payable to a junior clerk under suspension. The decision of the employer co-operative society to dismiss the second respondent from service was interfered with by the competent authority under the Kerala Co-operative Societies Act by passing a resolution. That was confirmed by the Government and by this Court as per Ext.P3 judgment, leaving the employer with liberty to proceed afresh. However, the petitioner was directed as per Ext.P3 judgment to treat the employee under suspension from the demoted post of

junior clerk and complete proceedings by independent consideration, in the light of what is stated in the judgment. Thereafter, the petitioner was dismissed from service on 21.8.2001.

2. The petitioner was not paid any subsistence allowance for the period from 23.12.1995 to 21.8.2001. This was because, by Ext.P4 decision of the employer dismissing the second respondent from service, it was concluded that the period from 23.12.1995 to 21.8.2001 would be treated as leave without any financial benefits. The second respondent filed an application invoking Section 33 (C)(2) of the Industrial Disputes Act, 1947 before the labour court. The labour court has issued the impugned order directing payment of subsistence allowance, that too, at the rate that would be applicable to a branch manager.

3. At the time of admission, this Court issued an interim order on 13.1.2003 on C.M.P.No.1688/03 to the following effect:

> "The amount due under the impugned award of the Tribunal is stated to be Rs.2,40,331.84. Petitioners have a contention that even assuming that the 2nd respondent is entitled to subsistence allowance that is not with reference to pay scale of Branch Manager as done in the impugned award but only treating him as a junior clerk with effect from 14.12.1994. In these circumstances, I am inclined to grant an interim stay of operation of execution of Ext.P8 on condition that the petitioners deposit before the Tribunal a sum of Rupees One Lakh within a period of three weeks from today."

It is submitted that the condition imposed on the writ petitioner as per that order has been complied with.

4. Learned counsel for the petitioner strenuously contended that within the parameters of jurisdiction under Section 33 (C) (2) of the I.D. Act, it was impermissible for the labour court to enter on adjudication of the entitlement of the petitioner to subsistence allowance on the face of a concluded proceedings evidenced by Ext.P4, whereby, the management has concluded that the period from 23.12.1995 to 21.8.2001 was to be treated as leave without any financial benefits. It was pointed out that

there was no foundational decision by any competent authority, on the basis of which, proceedings may be initiated and concluded under Section 33 (C)(2) of the I.D. Act. It was also argued that at any rate, the rate of subsistence allowance as has been ordered is unsustainable, the same having been fixed as applicable to a branch manager under suspension.

5. The right of the second respondent, as an employee under suspension, to subsistence allowance is referable to Kerala Payment of Subsistence Allowance Act, the provisions whereof also include the entitlement of the employee to move the competent authority under that statute for relief. It is also true that it is impermissible for the labour court to exercise authority under Section 33 (C)(2) of the I.D. Act to enter a declaration as to any entitlement, while proceedings under Section 33 (C)(2) could only be on the basis of declared entitlements. See **Divisional Personnel Officer, Southern Railway** v. **Kamalam and Others** [1988 (2) KLT 835]. To that extent, the impugned order could be treated as without jurisdiction.

6. However, being a matter arising for decision in writ jurisdiction, I deem it appropriate having regard to the peculiar facts and circumstances of the case, to decide once for all as to the entitlement of the second respondent, if any, for subsistence allowance, because, that is a allowance which is part of the social guarantees emanating out of the constitutional scheme and made available to persons who are placed under suspension while in employment. I may also at once recall that Ext.P3 judgment was issued by this Court specifically directing the management to treat the second respondent employee as one who continued under suspension from the demoted post during pendency of proceedings which were permitted to be taken following that judgment. This means that this Court had, in Ext.P3 judgment, declared the status of the second respondent during proceedings until final decision is taken against him. The net effect of that direction is that the petitioner would have to be treated as a person under suspension from 23.12.1995 to 21.8.2001 and he would be treated as having been suspended

while working as a junior clerk. This means that he was entitled to subsistence allowance that would be payable to a junior clerk under suspension from 23.12.1995 to 21.8.2001. This, essentially, is the concept on which the interim order quoted above was also issued. To do complete justice between the parties, while the impugned order could be set aside on account of lack of jurisdiction, it is also the necessity that the entitlement of the second respondent for subsistence allowance has also to be taken care of in this judgment to give a quietus to the disputes between the parties.

In the result,

(i) The impugned order is quashed.

(ii) The writ petitioner is directed to pay the second respondent subsistence allowance which is applicable to a junior clerk from 23.12.1995 to 21.8.2001, after deducting the amounts, if any, deposited in terms of order dated 13.1.2003.

(iii) All such amounts shall be released to the second respondent within an outer limit of two months from the date of receipt of a copy of this judgment.

(iv) If the petitioner has already deposited the amount covered by the interim order before the labour court, such amount shall be disbursed to the second respondent by that court on production of a copy of this judgment.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.968 OF 2003

JUDGMENT

1ST NOVEMBER, 2007.

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